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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	
E.I. DU PONT DE NEMOURS & CO., INC.	)	<b>COMPLAINT</b>
	)	
Defendant.	)	
	)	

1. The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

**NATURE OF ACTION**

2. This is a civil action to obtain injunctive relief and civil penalties for certain violations of the Clean Air Act (CAA), 42 U.S.C. § 7401, et seq. and the applicable regulations implementing the CAA which occurred at the DuPont Environmental Treatment, Chambers Works (DET) located in Deepwater, New Jersey.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395 and Section 113(b) of the CAA, because the violations alleged herein occurred in this District.

### **DEFENDANT**

5. The Defendant in this action, E.I. du Pont de Nemours & Company, Inc. (DuPont), is incorporated under the laws of the state of Delaware and was/is the owner/operator of the DET at all times relevant hereto. The DET is a wastewater treatment plant which treats, inter alia, wastes generated on and off-site.

6. DuPont is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and its applicable implementing regulations.

### **STATUTORY/REGULATORY BACKGROUND AND GENERAL ALLEGATIONS**

7. Section 112(d) of the CAA, 42 U.S.C. 7412(d), directs EPA to promulgate national emission standards for hazardous air pollutants (NESHAPs).

8. Hazardous air pollutants (HAPs) are listed in Section 112(b) of the CAA, 42 U.S.C. § 7412(b).

9. Section 112(c) of the CAA, 42 U.S.C. § 7412(c), directs EPA to publish a list of all categories and subcategories of, inter alia, major sources of HAPs.

10. Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), defines a “major source” as any stationary source or group of stationary sources located within a contiguous

area and under common control that emits or has the potential to emit, considering controls in the aggregate, 10 tons or more of any HAP or 25 tons or more of any combination of HAPs.

11. Section 302(z) of the CAA, 42 U.S.C. § 7602(z), defines “stationary source” as any source of an air pollutant except those emissions resulting from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 7550 of the CAA.

12. The DET is a “major source” within the meaning of Section 112(a)(2) of the Clean Air Act, 42 U.S.C. § 7412(a)(2).

13. EPA has listed off-site waste and recovery operations as an emission source category pursuant to Section 112(c) of the CAA, 42 U.S.C. § 7412(c). Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the Offsite Waste and Recovery Operations (OSWRO) NESHAPs regulation. That regulation is set forth at 40 C.F.R. Part 63, Subpart DD.

14. The Defendant, as owner or operator of DET, is subject to the OSWRO NESHAPs regulation.

15. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), provides, inter alia, that after the effective date of any emissions standard, no person may operate a source subject thereto in violation of such standard, limitation or regulation, except in the case of an existing source. In the case of an existing source, Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), directs EPA to publish a compliance date or dates for each such standard.

16. The OSWRO NESHAPs regulation at 40 C.F.R. § 63.6(i) requires the owner or operator of an existing source to achieve compliance with maximum achievable control technology (MACT) on or before February 1, 2000.

17. Pursuant to Section 112(i)(5) of the CAA, 42 U.S.C. § 7412(i)(5), however, EPA may issue a permit allowing an existing source for which the owner or operator demonstrates achievement of a 90% or greater HAP reduction, or 95% or greater in the case of particulates, to meet alternative emission limitations for a period of six years from the compliance date of a regulation promulgated under Section 112(d);

18. Pursuant to Section 112(i)(5) of the CAA, 42 U.S.C. § 7412(i)(5), the Defendant applied for, and EPA issued to Defendant on August 7, 1999, an Early Emissions Reduction Permit (ERP), allowing a six year extension for the DET to come into compliance with OSWRO. The ERP issued on August 7, 1999, and amended on February 6, 2001, provided that in lieu of compliance with OSWRO, the Defendant was required to meet an annual alternative emission limit (AEL), computed on a rolling annual average, of 18.9 tons combined HAPs.

19 Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA may commence a civil action for injunctive relief and civil penalties for any violation of the CAA or 40 C.F.R. Part 63, Subpart DD, including permits issued thereunder.

#### **CLAIM FOR RELIEF**

20. The Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 19 above.

21. From November 1999 through October 2000, the Defendant discharged combined HAPs at the DET which exceeded the AEL set forth in the ERP.

22. From December 1999 through November 2000, the Defendant discharged combined HAPs at the DET which exceeded the AEL set forth in the ERP.

23. From January 2000 through December 2000, the Defendant discharged combined HAPs at the DET which exceeded the AEL set forth in the ERP.

24. The acts referred to in the proceeding paragraphs constitute violations of the CAA and 40 C.F.R. Part 63, Subpart DD, including the relevant permit, as amended, issued to the Defendant.

25. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 60 Fed. Reg. 69,360 (Dec. 31, 1996), DuPont is liable for injunctive relief and a civil penalty of up to \$27,500 per day for each day during the periods of said violations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order the Defendant to comply with the applicable provisions of the CAA, and the OSWRO NESHAPs regulation;

2. Assess against the Defendant a civil penalty of up to \$27,500 per day for each day during the periods of said violations; and

3. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

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